

E-Filed on: 2/22/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PAUL A. HARPER,

Plaintiff,

v.

RICHARD WIEKING,

Defendant.

No. C-06-06320 RMW

ORDER DENYING PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS

[Re Docket No. 6]

On October 10, 2006, plaintiff initiated this action against Richard Wieking, Clerk of the United States District Court, Northern District of California. Plaintiff subsequently filed an application to proceed *in forma pauperis*. As part of his suit, plaintiff also filed a motion to compel discovery, which was denied by the magistrate judge because summons has not been issued due in part to the pendency of plaintiff's *in forma pauperis* application.¹

In forma pauperis status requires two findings: a finding of indigence and a finding that the underlying claim has some merit. *See Bradshaw v. Zoological Society of San Diego*, 662 F.2d 1301 (9th Cir. 1981). Plaintiff satisfies the first requirement because of his low stated income, however, the court


¹ The court notes that plaintiff has attempted to serve defendant on February 12, 2007, by mailing a copy of the summons, complaint, and the magistrate judge's Order Denying Premature Motion to Compel dated January 31, 2007. Personal delivery of the summons and complaint by the plaintiff does not constitute valid service on the defendant. *See* Fed. R. Civ. P. 4(c).

1 finds that because plaintiff seeks to sue a court clerk for actions taken in the course of his official duties,
 2 his complaint fails to state a claim upon which relief can be granted. On that ground, the court denies
 3 plaintiff's applications to proceed *in forma pauperis*.

4 Plaintiff's claim appears to be based on the Civil Justice Reform Act ("CJRA"), 28 U.S.C. §§
 5 471-482 and seeks, *inter alia*, "civil damages for violations of Fed. R. App. Proc. [3 and 4]." Plaintiff's
 6 claims are apparently related to entry of a "Notice of Appeal" on the docket for a case previously filed
 7 by the plaintiff in this court, *Harper v. Catterson*, Case No. 06-02587-SI. Plaintiff alleges that he has
 8 been deprived of his civil rights as a result of the entry of this "false" Notice of Appeal and seeks
 9 \$1,000,000 in compensatory damages.

10 "Court clerks have absolute quasi-judicial immunity from damages for civil rights violations
 11 when they perform tasks that are an integral part of the judicial process." *Mullis v. United States*
 12 *Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir.1987); *see also Moore v. Brewster*, 96 F.3d 1240,
 13 1244-45 (9th Cir. 1996) (outlining absolute judicial immunity and quasi-judicial immunity of court
 14 clerk). "When judicial immunity is extended to officials other than judges, it is because their judgments
 15 are functionally comparable to those of judges – that is, because they, too, exercise a discretionary
 16 judgment as a part of their function." *Antoine v. Byers & Anderson*, 508 U.S. 429, 436 (1993) (quotation
 17 omitted). Where a clerk files a document with the court, he is entitled to quasi-judicial immunity for
 18 his actions, provided the acts complained of are within the clerk's jurisdiction. *Mullis*, 828 F.2d at 1390.
 19 The filing and docketing a notice of appeal is an integral part of the judicial process, and court clerks
 20 are the officials through whom such filing is done. Since plaintiff's claims are based on the clerk's filing
 21 and processing of the notice of appeal (or other similar court documents), defendant is entitled to quasi-
 22 judicial immunity. Thus, plaintiff's complaint does not state a claim upon which relief may be granted.
 23 The court finds that plaintiff's claim does not have the requisite merit to permit the plaintiff to proceed
 24 *in forma pauperis*. Therefore, the action will be dismissed unless the required filing fee is paid by
 25 March 23, 2007.

26
 27 DATED: 2/21/07


 RONALD M. WHYTE
 United States District Judge

1 **Notice of this document has been sent to:**

2 **Plaintiff:**

3 Paul A. Harper
4 P.O. Box 32621
5 Long Beach, CA 90832
6 PRO SE
7

8 **Dated:** 2/22/07

/s/ MAG
Chambers of Judge Whyte